

EXHIBIT 4

DECLARATION OF MELISSA WHITAKER

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASHTON WHITAKER, a minor, by his mother and next friend, MELISSA WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD OF EDUCATION and SUE SAVAGLIO-JARVIS, in her official capacity as Superintendent of the Kenosha Unified School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP
Judge Pamela Pepper

DECLARATION OF MELISSA WHITAKER

1. My name is Melissa Whitaker. I am the mother of Ashton (“Ash”) Whitaker, the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.
2. I live in Kenosha, Wisconsin with my son, Ash Whitaker.
3. I am employed by the Kenosha Unified School District No. 1 as a high school teacher at George Nelson Tremper High School (“Tremper”).
4. Ash was designated “female” on his birth certificate, but in spring 2013, he told me that he is transgender and a boy. After this, he slowly began transitioning publicly by cutting his hair short, wearing more masculine clothing, and going by a masculine name and masculine pronouns. A recent photo of Ash is attached to this declaration as Exhibit A.
5. Ash was diagnosed with Gender Dysphoria by his pediatrician and his therapist, whom he began seeing around the time of his transition. He currently sees a clinical psychologist

to support him in his transition and has begun consulting with a pediatric endocrinologist at Children's Hospital of Wisconsin. He started hormone therapy (testosterone) in July 2016.

6. On August 2, 2016, I took Ash to the Kenosha County Circuit Court and he filed a petition for a legal name change to his traditionally masculine first name, Ashton. He has a court date of September 15, 2016 at which I expect the petition will be granted.

7. Ash's gender transition has been largely accepted and respected by the school community. Many newer students or students who did not know him well, did not even know that Ash was transgender, and just saw him as any other boy, until the school's treatment of him put a spotlight on his transgender status.

8. In spring 2015, during his sophomore year, Ash and I met with his guidance counselor, Debra Tronvig, and requested that he be permitted to use the boys' restrooms. In March 2015, Ms. Tronvig told us that the administration had decided Ash could use either the girls' restroom or a single-user, gender-neutral restroom in the main office. Being offered these two "options" made my son visibly overwhelmed and upset, as either option seemed impossible. As a boy, he cannot use the girls' restrooms. And using the main office restroom would raise too many questions from staff and his peers and is stigmatizing by labeling him as different from all other students.

9. Due to the school's policy, Ash tried to avoid using the restrooms at school for the rest of that school year by restricting the amount of liquids he drinks. This was especially dangerous because Ash suffers from vasovagal syncope, a medical condition that can result in fainting due to certain physical or emotional triggers. His physician has recommended that he drink 6-7 bottles of water and a bottle of Gatorade every day, since dehydration and stress can cause him to faint.

10. Ash has also experienced symptoms associated with Gender Dysphoria, such as depression and anxiety. These symptoms have gotten worse due to the anxiety caused by the school's policy and how disrespected and humiliated it makes him feel to be treated this way.

11. From September 2015 onwards, during Ash's junior year, he used the boys' restrooms, after having learned during a trip to Europe in the summer of 2015 that it was his legal right to do so.

12. In February 2016, two assistant principals, Brian Geiger and Wendy LaLonde, learned from a Tremper teacher that Ash was using the boys' restroom. They decided that, consistent with the previous year's decision, Ash would not be allowed to use the boys' restroom. I received a call in late February 2016 from Ms. Tronvig letting me know that the school administration had decreed that Ash was not to use the boys' restrooms and could only use the single-user, gender neutral restroom or the girls' restrooms.

13. Around March 10, 2016, Ash and I met with Ms. Tronvig and assistant principal Holly Graf. At this meeting, Ms. Graf referred to Ash by his birth name and used female pronouns. Ms. Graf said that Ash could use the boys' restrooms only if his gender was changed in the school's official records. In order to do that, Ms. Graf told me that she would need to see legal or medical "documentation." She did not explain what she meant by that.

14. I explained to Ms. Graf that Ash was too young for transition-related surgery. Ms. Graf would not give me more guidance on what kind of documentation was needed to change Ash's gender in the school records.

15. After that meeting, I contacted Ash's pediatrician and requested that she send a letter to the school explaining why Ash needs to use the boys' restroom. The pediatrician faxed a letter confirming that Ash is a transgender boy and that he should be allowed to use the boys'

restroom. When Ms. Graf told me that the first letter was not sufficient, I asked the pediatrician to send a second letter reiterating the above, which she did.

16. Despite the letters, I received an email from Richard Aiello, the Tremper principal, stating that Ash would not be allowed to use the boys' restroom because the letter was not acceptable. He did not explain why.

17. When I met with the administrators on March 6 and March 22, 2016, I asked that they change Ash's name and gender in the school records to avoid issues where he had to request at the beginning of every term that teachers change his name in the roster. At both meetings, Ms. Graf told me that medical or legal documentation was needed to do this. After the pediatrician sent the letters, she told me the documentation was not enough, but she would not tell me what would be sufficient.

18. Ash continued to use the boys' restroom, but he generally tried not to use the restrooms at school at all. I became even more worried about his emotional and physical health. He began showing increased anxiety and depression. He experienced more symptoms of vasovagal syncope, including dizziness, fainting, and migraines. In March 2016, I took him to see his pediatrician about these symptoms, and she told him to drink and eat regularly to avoid those symptoms. During the day at school, I would often hand him a bottle of water to drink to avoid dehydration, but he would refuse it because he did not want to have to use the school restroom.

19. Throughout the rest of the school year, Ash continued to use the boys' restroom when he had to, and I was called into multiple meetings with him in Ms. Graf's office. During these meetings, Ms. Graf would repeat that the school's policy was that Ash could not use the

boys' restroom and should only be using the girls' restroom or single-user restrooms. I know Ash found these meetings intrusive, demeaning, and embarrassing.

20. In April 2016, I learned that the school administrators had emailed the school's security guards and told them to notify administrators if students were seen going into the "wrong restroom." I was told by individual security guards that this was targeted at Ash. When Ash found out about this, he was humiliated that he was being monitored like that.

21. On April 5, 2016, I was pulled out of my classroom and brought to a meeting with Dr. Bethany Ormseth, KUSD's Chief of School Leadership, and Susan Valeri, KUSD's Chief of Special Education and Student Support. I asked them whether KUSD had adopted any policies about transgender student bathroom use, and they told me a policy was being created by a committee. I told them, "You don't need a policy—it's a federal law."

22. Throughout the 2015-2016 school year, I repeatedly requested to see a written policy about transgender students' bathroom use, but have not been provided a policy by any school official. I believe that there is no formal written policy and that the Tremper administration invented one because they are uncomfortable with Ash.

23. On April 6, 2016, Ash and I attended a meeting with Mr. Aiello, Ms. Graf, and Ms. Valeri. At this meeting, Ash was offered the option of using two single-user restrooms on the opposite sides of the campus. Only Ash would have a key to these restrooms, which were far from his classes.

24. During this meeting, Ash asked Ms. Valeri why he wasn't allowed to use the boys' restrooms. She said something like, "Well, we've never had a student who identifies as male but was born female." Ash told her that he is protected by Title IX, which prohibits discrimination based on sex and requires that transgender students be allowed to use school

bathrooms that match their gender identity. Valeri disagreed with Ash that Title IX protects transgender students' access to bathrooms that match their gender identity. When he asked her to explain what she thought Title IX meant, she said, "I don't think I'm going to give you any reasons."

25. I have observed Ash's physical and emotional health worsen as a result of the school's actions. He has suffered more dizziness and near-fainting as he has continued to avoid using the restrooms. He has also become more anxious and lethargic. There are an increasing number of mornings that he does not want to go to school. He has even been considering transferring to an online high school to get away from the overwhelming scrutiny and stigma he feels from the Tremper administration.

26. Around March 22, 2016, I met with Mr. Aiello and Ms. Graf. At this meeting, I was told that Ash had been nominated for prom court, but could only be a candidate for prom queen, not prom king. When Ash learned about the school's decision, he was devastated by the administrators' disrespect and humiliated by the idea that, as a boy, he would have to run for prom queen.

27. Ash and his friends then started an online petition that generated thousands of signatures urging the school to allow Ash to run for prom king and use the boys' bathrooms. Ash's friends also held a sit-in in to protest the administrators' discriminatory policies. On April 6, 2016, school administrators told us that Ash would in fact be allowed to run for prom king.

28. When I met with the administrators on March 6 and March 22, 2016, I asked that they change Ash's name and gender in the school records to avoid issues where he had to request at the beginning of every term that teachers change his name in the roster. At both meetings, Ms. Graf told me that medical or legal documentation was needed to do this. She told me the letter

we sent—from Ash’s pediatrician—was not enough, but she would not tell me what would be sufficient. She has never told me what, if anything, would change the school’s position.

29. On or about May 11, 2016, Ash told me about an incident at school where the orchestra’s volunteer pianist said to him, “Ash, honey, this isn’t about you, this is bigger than you. I’m praying for you.” This woman’s husband has spoken out against transgender students being able to use the bathroom of their gender identity in KUSD board meetings, and she runs a Facebook group called “KUSD Parents for Privacy,” which is critical of transgender students’ rights. I brought the incident to the attention of Mr. Aiello, but it hasn’t made a difference. I was told that Ash’s orchestra teacher was asked to call the volunteer and to tell her not to talk to students like that. However, the woman is still a volunteer, and having her continue has made it difficult for Ash to enjoy orchestra, which used to be one of his very favorite activities.

30. In May 2016, Ms. Tronvig, Ash’s guidance counselor, showed me what she described as and what I understood to be a neon green wristband that the school was planning to ask transgender students to wear to monitor their bathroom use. She gave me several of the wristbands to keep; they look like strips of neon green stickers. A photograph of one of these strips is attached to this declaration as Exhibit B. To my knowledge, the school’s plan is still in place and guidance counselors will be providing these green labels to transgender students or any student uncomfortable using the public restrooms in the upcoming school year.

31. When I told Ash about the green wristbands, he felt scared and humiliated. He was adamant that he would refuse to wear that kind of label, as it would serve to stigmatize him and mark him out as different from all his peers, and he was also extremely worried and scared that the school might require him to do so anyway.

32. Ash and I have repeatedly told KUSD officials that their actions violate Title IX and Ash's right to attend school free from discrimination. They have not responded.

33. Ash has suffered physically and emotionally from KUSD's actions. I have seen his symptoms of depression and anxiety increase over the past two years as the school's actions have taken more and more of a toll. He has difficulty sleeping and difficulty focusing in class, and feels unsafe leaving the house by himself, as he worries he will be targeted by people who know he is transgender and may target him for violence.

34. I have seen the turmoil my son has going through. I have been heartbroken and angry at the thought that he went through this treatment by the school district, but I fear and stress at the thought that in his senior year, he may once again been subjected to discriminatory, hurtful, and unnecessary treatment by a few who feel justified in doing so. I try to keep a brave front for his sake and bring up only the positives that he should experience in his last year, but I hear him say how much he dreads this year and just wants to move on to the next step where he knows he will not have to endure such treatment. Disheartening is not strong enough to explain what I know he has gone through; what we have both endured is more than we ever expected. I pray for my son to be strong and stay focused on his goals, his friends, his family, and of who he is as a person and not to let the negativity of a few tear him down.

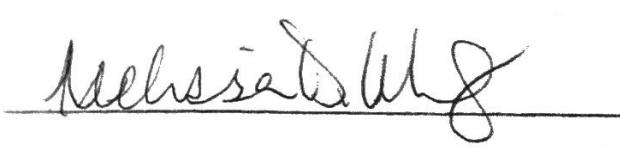
35. Over the summer, when he has not been in school, I have seen his symptoms of anxiety, depression, dehydration, dizziness, fainting, and migraines decrease substantially. I believe this is because he does not face daily scrutiny and stress at home that he does at school and where he is not worried about having to use the bathroom.

36. If he is not able to use the boys' restroom next year and if school administrators and staff continue to refer to him as a girl, I believe Ash will experience the same or worse harm to his health, wellbeing, and ability to learn.

Pursuant to 8 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 14, 2016

By:


Melissa Whitaker

EXHIBIT

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